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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,477	03/01/2002	Sean C. Semple	INEX.P-006-2	3225
21121	7590	08/27/2003	EXAMINER	
OPPEDAHL AND LARSON LLP P O BOX 5068 DILLON, CO 80435-5068			NGUYEN, DAVE TRONG	
		ART UNIT	PAPER NUMBER	
		1632		

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/086,477	SEMPLE ET AL.	
	Examiner Dave T Nguyen	Art Unit 1632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) \_\_\_\_\_ is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 1-21 are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

**Election/Restriction**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 3, 14, drawn to an immunostimulatory composition comprising a nucleic acid polymer composed of at least one CpG motif, which is encapsulated in a lipid particle comprising a cationic lipid, classifiable in class 514, subclass 44.
- II. Claims 2, 13, drawn to an immunostimulatory composition comprising a nucleic acid polymer which is a non-sequence specific immunostimulatory sequence, which is encapsulated in a lipid particle comprising a cationic lipid, classifiable in class 514, subclass 44.
- III. Claims 4, 15, drawn to an immunostimulatory composition comprising a nucleic acid polymer which has no detectable immunostimulatory activity in the mammal in the absence of a lipid particle, which is encapsulated in said lipid particle comprising a cationic lipid, classifiable in class 514, subclass 44.

Claim 1, wherein claims 5-12, 16-19 are all dependent from claim 1, is identified as the linking claim among inventions I-III. Note that the restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), as listed above. Upon the allowance of the linking claims, the restriction requirement as to the liked invention shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to

examination in the instant application. Applicant(s) are advised that if any such (claim(s) depending from or including all the limitations of the allowable lining claim(s) is/are presented in a continuation or divisional application, the claims or the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Should invention I, II, or III be elected, claims 20-21 will be examined together with the elected claimed invention.

The inventions are distinct, each from the other because of the following reasons:  
Inventions I, II and III are distinct because the invention each is directed to the use of a distinct material of a nucleic acid polymer. A search of the use of a CpG motif containing sequence which sequence-specific immunostimulatory, does not necessarily overlap with that of a nucleic acid polymer which inert by itself, nor is it the same as a nucleic acid polymer which is a non-sequence specific immunostimulatory oligo.

Should any of Inventions I-III be elected, a following species restriction is required:

The claims of any of Invention I-III are generic to a plurality of disclosed patentably distinct species comprising:

A specifically named cationic lipid as listed in claim 6, 17, which is used to complex with a DNA for gene transfer.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species of a specific named cationic lipid as recited in the to be elected claimed invention even though this requirement is traversed.

A specifically named antigenic molecule as listed in claim 11.

Applicant is further required under 35 U.S.C. 121 to elect a single disclosed species of a specific named antigenic molecule as recited in the to be elected claimed invention even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their divergent subject matter, fall into different statutory classes of invention, and are separately classified and searched, it would be unduly burdensome for the examiner to search and examine for patentability

of all of the claimed inventions, and thus, restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Dave Nguyen* whose telephone number is **(703) 305-2024**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Deborah Reynolds*, may be reached at **(703) 305-4051**.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center number is **(703) 305-7401**.

Any inquiry of a general nature or relating to the status of this application should be directed to the *Group receptionist* whose telephone number is **(703) 308-0196**.

Dave Nguyen  
Primary Examiner  
Art Unit: 1632

DAVE T. NGUYEN  
PRIMARY EXAMINER